



NATIONAL LABOR RELATIONS BOARD

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NLRB PROPOSES RULE FOR DETERMINING SINGLE LOCATION BARGAINING UNITS

As an alternative to case-by-case adjudication in most single location cases, the National Labor Relations Board has issued a proposed rule setting forth the decisive factors it will use in determining the appropriateness of a single location bargaining unit where the employer possesses more than one facility.

The proposed rule, published in the September 28, 1995 Federal Register, would apply to all routine Board cases in which the issue is whether a unit of unrepresented employees at a single location is an appropriate unit. As proposed, the rule applies to all industries, except the utility industry, the construction industry, and the seagoing crews in the maritime industry. The Board, however, will continue to decide novel and unusual cases by adjudication under the extraordinary circumstances exception to the rule. The Board is seeking comments from the public about the proposal, which first was announced in a notice published on June 2, 1994.

NLRB Chairman William B. Gould IV stated:

"My intent for this proposal is to set forth more clearly for the public and labor bar the factors the Board will find critical in most single location cases. The result will be that parties will not have to engage in drawn out and wasteful litigation to figure out if a unit is appropriate. In my view, having a single location unit rule also will enable the Board to process these cases more efficiently--faster and at less expense to the agency and the parties. I welcome the comments of all the public on this matter."

In NLRB representation cases, where an employer possesses more than one facility, extensive litigation frequently is conducted to determine whether the appropriate unit is the single facility or whether the unit should consist of multiple locations. Factors such as the functional integration of sites, similarity of employee skills and terms and conditions of employment, and centralized control, no longer would be considered under the proposed rule. Instead, under the proposal, a single location worksite would be considered an appropriate unit if it is geographically distant (at least one mile) from other worksites, if interchange between other locations is minimal, if a statutory supervisor is present on the site, and the requested unit contains 15 or more unit employees.

The proposed rule describes the problems in the present adjudicatory approach and how the rule would reduce litigation:

“A major reason for litigation of this issue is the attempt by the parties to prove the existence of certain factors and the ‘significance’ of those factors. Were the Board to establish a rule specifying under which fact situations a single location unit will automatically be found appropriate, there would be considerably less litigation over the significance or lack of significance of these facts, and the factors to which they relate.

“The desirability of reducing litigation is evident from the current approach. The Board currently considers a number of factors in single location cases to determine whether the presumptive appropriateness of a requested single location has been rebutted. Often, the parties seek to prove the existence or absence of various factors by introducing voluminous testimony and documentary evidence concerning a myriad of facts. The parties litigate the significance of each fact and factor, and then the Regional Director and, if a request for review is filed, the Board determines whether the various factors exist and are significant. The parties and the public are left to their own devices to deduce which facts and factors may or may not be deemed most significant in a particular case, although, as indicated, the result in the majority of cases is that the single facility unit requested is found appropriate.

“We believe our decision to decide these cases under a rule will have little effect on the substantive results of most routine single location unit cases. Moreover, as described later in this document, the rule provides for an extraordinary circumstances exception to address those novel and difficult cases which should be decided by adjudication.”

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